

# HOUSE BILL REPORT

## HB 1498

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to provisions governing firearms possession by persons who have been involuntarily committed.

**Brief Description:** Concerning provisions governing firearms possession by persons who have been involuntarily committed.

**Sponsors:** Representatives Hunter, Blake, Kretz, Pedersen, Goodman, Williams, Carlyle, Roberts, McCune, Ericks, White, Hasegawa, Kagi, Nelson and Warnick.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/26/09, 1/29/09 [DP].

#### **Brief Summary of Bill**

- Prohibits possession of firearms by persons who have been involuntarily committed for mental health treatment under the 14-day commitment process.
- Requires courts to forward a disqualified person's identifying information to the Department of Licensing (DOL) and the National Instant Criminal Background Check System (NICS).
- Requires courts to notify the DOL, the Department of Social and Health Services, and the NICS when a court reinstates the right to possess a firearm for a person who was previously involuntarily committed.
- Revises the process for restoration of the right to possess a firearm for those persons who have been involuntarily committed.
- Amends the involuntary commitment statutes to require notice regarding the loss of firearm rights if a person is involuntarily committed.

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### HOUSE COMMITTEE ON JUDICIARY

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Edie Adams (786-7180)

**Background:**

Both state and federal law regulate the possession and transfer of firearms, including prohibiting certain persons from legally possessing firearms. Generally, a person may not possess a firearm if the person has been convicted of a felony or has been involuntarily committed to a mental health treatment facility for a specific period of time.

Involuntary Commitment.

Under Washington's involuntary treatment laws, a person who is gravely disabled or presents a likelihood of serious harm because of a mental disorder may be held in a mental health treatment facility for evaluation for up to 72 hours.

Within that initial 72-hour evaluation period, a professional in charge of the treatment facility may petition the court for a 14-day involuntary treatment commitment of the person. After a hearing and finding by a preponderance of the evidence that the person is gravely disabled or presents a likelihood of serious harm, the court may order the person to be involuntarily committed to a mental health facility for up to 14 days. If the court finds that a less-restrictive alternative than detention is in the person's best interest, the court may order the person to receive up to 90 days of outpatient treatment.

At any time during the treatment period, the professional in charge of the treatment facility may petition the court for an additional 90-day commitment, and subsequently for an additional 180-day commitment. There are similar 14-day and 180-day commitment procedures for mental health treatment for minors.

Firearm Laws.

In Washington, it is a class C felony offense for a person to possess a firearm if the person has previously been involuntarily committed for mental health treatment under the 90-day or 180-day procedures or under the statutes governing criminal competency and insanity pleas.

Washington does not prohibit the possession of firearms by persons who have been involuntarily committed under the 14-day commitment process. Federal law, however, prohibits the possession of firearms by a person who has been adjudicated as a mental defective or who has been committed to a mental institution. The terms "adjudicated as a mental defective" and "committed to a mental institution" are defined by federal rule and would include a person involuntarily committed under Washington's 14-day commitment procedure.

When a person is disqualified from possessing a firearm due to a conviction or commitment, the court must forward a copy of the person's driver's license or other identification

information to the Department of Licensing (DOL). The statutes do not specify when the court must forward this information.

#### Restoration of Firearm Possession Rights.

A person who is prohibited from possessing a firearm because of an involuntary commitment may petition the court to restore his or her right of possession once the person is discharged. The person must show that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur and that he or she:

- is no longer required to participate in an inpatient or outpatient treatment program;
- is no longer required to take medication to treat any condition related to the commitment; and
- does not present a substantial danger to self or others.

If the person has engaged in violence and it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person must show by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

#### National Instant Criminal Background Check System.

The National Instant Criminal Background Check System (NICS) is a criminal history database maintained by the Federal Bureau of Investigation. The NICS is used by firearms dealers and law enforcement to conduct background checks to determine a person's eligibility to purchase a firearm.

There is no requirement in state law that the state forward involuntary commitment data to the federal NICS database. However, the Department of Social and Health Services (DSHS) submits certain mental health records to the NICS. The DSHS records come from a variety of sources, such as its state hospital admission data and county-based mental health authorities. The data is submitted only on a monthly basis and does not capture all persons who have had involuntary commitments that disqualify them from possessing firearms under state or federal law.

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#### **Summary of Bill:**

The crime of unlawful possession of a firearm in the second degree is amended to include persons who have previously been involuntarily committed for mental health treatment, either as an adult or juvenile, under the 14-day commitment procedures.

When a person is involuntarily committed for mental health treatment, the court must forward a copy of the person's driver's license or other identification information to the NICS within three judicial days. When a person who was prohibited from possessing a firearm due to involuntary commitment has his or her right to possess a firearm restored, the court must forward notice of the restoration to the DOL, the DSHS, and the NICS within three judicial days.

The standards and processes that apply to the restoration of firearm rights when a person was involuntarily committed are revised. A petition for restoration of firearm rights may be filed in the superior court that ordered the commitment or in the county in which the petitioner resides. The petitioner must show by a preponderance of the evidence that:

- the petitioner is no longer required to participate in court-ordered treatment;
- the petitioner has successfully managed the condition related to the commitment;
- the petitioner does not present a danger to self or the public; and
- the symptoms related to the commitment are not reasonably likely to recur.

The involuntary commitment statutes are amended to require notice regarding the loss of firearm rights when a person is involuntarily committed. In a 14-day commitment proceeding for an adult or a minor, the court must inform the person both orally and in writing that failure to make a good faith effort to seek voluntary treatment will result in the loss of his or her firearm rights if the person is subsequently involuntarily committed. Notice also must be provided in the petition and during the proceeding of the loss of firearm rights if the person is involuntarily committed.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) People who have been determined to be a danger to themselves or others should not be in possession of guns. This presents a safety issue not only for the public but also for the person suffering from mental illness. This bill helps to solve this problem and it is narrow in scope. It applies only to persons who have been involuntarily committed and it establishes a clear process for persons to regain the right to possess firearms when they no longer present a danger to themselves or the public.

Law enforcement has been very frustrated by the current system. There have been circumstances where people who are prohibited from possessing firearms have been able to obtain a concealed pistol license and purchase firearms because their mental health commitments were not reported to the Department of Licensing. Washington is not in compliance with the federal Brady Law and federal restrictions in regard to 14-day commitments, and this bill will bring Washington into compliance. Information on mental health commitments needs to be entered immediately into the appropriate databases so that those persons cannot buy firearms.

(Neutral) The National Rifle Association has been opposed to this bill in the past based on due process concerns, but it has removed its opposition this year. This bill addresses those concerns by providing clearer notice to persons subject to involuntary commitment that if

they don't seek voluntary treatment, they will lose their firearm rights if involuntarily committed.

**Persons Testifying:** (In support) Representative Hunter, prime sponsor; Lis Edy, Seattle Police Department; Mike Zaro, City of Lakewood Police Department; and Zach Carstensen, Jewish Federation of Seattle.

(Neutral) Brian Judy, National Rifle Association.

**Persons Signed In To Testify But Not Testifying:** None.